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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**IN RE:** § **CASE NO. 13-33404-HDH-11**  
§  
**GARY GRIFFITH,** §  
**Debtor** §  
§  
§  
§  
**Objection to Confirmation**  
**Set July 29, 2014 at 9:00 a.m.**

## **PROSPERITY BANK'S OBJECTION TO CONFIRMATION**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Comes NOW, Prosperity Bank (“Prosperity”), successor-in-interest to First Victoria National Bank, secured creditor herein, and files its Objection to Confirmation of the Chapter 11 Plan filed by Gary Griffith, Debtor (“Debtor”), and respectfully shows the Court the following:

1. Debtor filed his petition in this bankruptcy case on July 7, 2013.
  2. On September 30, 2013, First Victoria National Bank filed a secured Proof of Claim [Claim No. 9] in the amount of \$35,054.00, for a Judgment against Debtor in Cause No. DC-11-10827-E styled *First Victoria National Bank vs. Gary R. Griffith*, out of the 101<sup>st</sup> District Court, Dallas County, Texas, which is secured by perfected lien evidenced by Abstract of Judgment recorded at Document No. 2013-00001815, Official Public Records of Wood County, Texas, against a tract of real property identified in Debtor's Second Amended Plan of Reorganization as, and being located at, 4694 FM 2869, Winnsboro, Texas, and being 451.37 acres of land, more

or less, situated in the F.L. SMITH SURVEY, ABSTRACT NO. 522 and in the J.A. GREER SURVEY, ABSTRACT NO. 228, Wood County, Texas, as more fully described by that certain Warranty Deed With Vendor's Lien from George L. Leonard Investments, Inc., to Gary R. Griffith and Stephany Abernathy, recorded on February 18, 2011, at Document Number 2011-00002033, Official Public Records of Wood County, Texas. In his Schedules, Debtor has stated a value for this real property of \$1,800,000.00.

3. Prosperity is further secured by perfected liens against certain equipment listed in the above-referenced judgment and in an Agricultural Security Agreement dated May 3, 2010, further evidenced by that certain UCC Financing Statement filed June 3, 2010 with the Texas Secretary of State at Filing Number 10-0015856945 and Document Number 310320980002.

4. Prosperity is the owner and holder of the Secured Claim No. 9 and all liens associated therewith, as successor-in-interest by merger to First Victoria National Bank.

5. Prosperity is a Class 7 Claimant. Prosperity's secured claims are impaired under the Plan.

6. Prosperity objects to Debtor's Second Amended Plan in that it attempts to modify Prosperity's Secured Claim by proposing an annual interest rate on Prosperity's claim of 0% per annum, contrary to the 18% interest rate ordered in the Judgment in Cause No. DC-11-10827-E styled *First Victoria National Bank vs. Gary R. Griffith* and the default/post-maturity rate agreed to in the underlying Note subject of the Judgment. The contracted default rate is required. *Matter of Southland Corp.*, 160 F.3d 1054 (5<sup>th</sup> Cir. 1998); *Matter of Laymon*, 958 F.2d 72 (5<sup>th</sup> Cir. 1998). *In re Ace-Texas, Inc.*, 217 B.R. 719 (Bankr. D. Del. 1998).

7. Prosperity objects to Debtor's Second Amended Plan in that it attempts to modify Prosperity's Secured Claim and treats Prosperity's Claim differently than other similarly placed secured creditors. Prosperity notes that while Debtor proposes to pay 6% interest on the claims of

all other secured creditors, Debtor proposes to pay Prosperity no post-petition interest. Prosperity further notes that Debtor previously proposed to pay 6% interest on Prosperity's Claim in Debtor's First Amended Plan, consistent with other secured creditors, but Debtor, without justification, now proposes to pay 0% interest on Prosperity's claim under Debtor's Second Amended Plan.

8. Prosperity objects to Debtor's Second Amended Plan in that it attempts to modify Prosperity's Secured Claim and treats Prosperity's Claim differently than other similarly placed secured creditors. Debtor proposes to pay Prosperity's Claim over a period of 7 years, as opposed to the 4.5 and 5 year terms of the Class 3, 4, 5, and 6 creditors.

9. Prosperity objects to Paragraph 11.1 of the Plan in that it seeks to create post-confirmation jurisdiction for this Court beyond what has been permitted by rulings of the 5<sup>th</sup> Circuit. *In re Enron*, 535 F.3d 325 (5<sup>th</sup> Cir. 2008); *In re: Craig's Stores of Texas*, 226 F.3d 388 (5<sup>th</sup> Cir. 2001).

10. Prosperity objects to confirmation of Debtor's Plan in that it fails to meet the requirements of 11 U.S.C §1123.

WHEREFORE PREMISES CONSIDERED, Prosperity prays for order of this Court denying confirmation of Debtor's Chapter 11 Plan as proposed, and for such other and further relief, special and general, to which Prosperity Bank may show itself justly entitled.

Respectfully submitted,

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BY: /s/ H. Clinton Milner

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Objection to Confirmation was served upon the following parties below by electronic filing:

Howard Spector  
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Office of the U.S. Trustee  
1100 Commerce, Room 9C60  
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and by First Class Mail, Postage Pre-Paid on:

Gary Griffith  
4694 FM 2869  
Winnsboro, TX 75494

Jefferson Capital Systems, LLC  
P.O. Box 7999  
St. Cloud, MN 56302-9617

Dated July 17, 2014

/s/ H. Clinton Milner  
H. CLINTON MILNER